

STB Misses the Point, Further Weakening Final Merger Rules

(Washington, D.C.) — After initial review of the Surface Transportation Board's (STB) final rulemaking governing major rail consolidations, released this morning, representatives of the Alliance for Rail Competition (ARC) were disappointed but not surprised to find the STB further weakened its original proposal. While the Board's rhetoric still seemingly supports the general concept of increased competition, the final rule included even fewer references to the more specific concerns about rail-to-rail competition than included in the original proposal.

“Those customers who, because of their location or the nature of the product being moved, can only choose rail transportation are the ones that have been left to the mercy of expanding regional monopolies,” said Diane Duff, Executive Director of ARC. “These new merger rules offer no reason for those captive customers to believe their concerns will be addressed to any better satisfaction than they have in previous merger proceedings. In fact, by emphasizing its support for the general concept of promoting ‘competition’ rather than the specific need for increased ‘rail-to-rail competition,’ the Board appears to have missed the point altogether.” Most agree that, to the extent that rail mergers improve rail operations, they could, at least theoretically, improve the railroad's ability to compete for truck-competitive traffic, although this has yet to be borne out in any previously completed merger. Rather, competitiveness concerns expressed by rail customers have always focused on the fact that little or no attention has been given to promoting competition among and between rail carriers.

Instead, the Board chose to require future merger applicants to file more paperwork for the purpose of demonstrating that the proposed merger is consistent with the “public interest”—a term that can be subjectively defined by the Board in each individual proceeding. Certainly, this approach may make the process of preparing a merger application more burdensome for railroads, simply because of the added paperwork required and the uncertainty of how the Board will apply its new rules. However, there is no reason to believe that the Board will do anything other than accept the word of the applicants that all of the supposed benefits of the merger will come to pass and that all of the required contingency planning will be sufficient to address any resulting service problems. Furthermore, there is little indication that any significant penalties would be imposed on the applicants if the promises of the proposed merger do not come to pass.

According to Duff, “The Board continues to protect railroad executives from having to concern themselves about rail-to-rail competition.” Duff continued, “More concerning, though, is the Board's obvious belief that it is a better judge of what kind of ‘balance’ is needed between the interests of railroads and their customers than a competitive marketplace could ever be. ARC will continue to petition Congress to address rail customers' concerns.”

The Alliance for Rail Competition is a coalition of rail customers representing the agriculture, coal, chemical, petrochemical, utility, steel, forest and paper products industries, among others. ARC's mission is to secure increased competition among rail carriers through legislative changes to rail policy. More information about ARC is available on our website at www.railcompetition.org.